

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

GERARDO RODRIGUEZ and
MANALI OLEKSY,

Plaintiff,

v.

Case No. 20-C-1819

CITY OF GREEN BAY,

Defendant.

DECISION AND ORDER

Plaintiffs Gerardo Rodriguez and Manali Oleksy filed a class action lawsuit against Defendant City of Green Bay, alleging that the City deprived the class of their federal rights as a result of a curfew enacted on June 1, 2020. Plaintiffs brought their claims on behalf of a class consisting of any person arrested or cited under the City's curfew on June 1, 2020. Pursuant to the Court's scheduling order, Plaintiffs were to file a motion for class certification by April 15, 2021. To date, Plaintiffs have not filed a motion to certify the class. The City now moves the Court for an order denying Plaintiffs' class certification and striking Plaintiffs' class allegations pursuant to Federal Rule of Civil Procedure 23. Plaintiffs have neither responded to the motion nor requested an extension of time to respond, and the time to do so has passed. Whether Plaintiffs have abandoned their efforts to certify a class or not, the Court will grant the City's motion to strike.

Rule 23 of the Federal Rules of Civil Procedure provides that a court must determine whether to certify a class "[a]t an early practicable time after a person sues or is sued as a class representative." Fed. R. Civ. P. 23(c)(1)(A). Class allegations may be stricken from a complaint for failure to comply with court orders. *See, e.g., Burkhalter v. Montgomery Ward & Co., Inc.,*

676 F.2d 291 (8th Cir. 1982) (affirming district court's striking of class allegations due to the plaintiff's failure to comply with court order setting deadline for filing motion for class certification); *Kline v. Mortgage Electronic Security Systems*, No. 08-cv-408, 2015 WL 13048741, at *18 (S.D. Ohio Sept. 25, 2015) (striking class allegations based on Plaintiff's failure to file a class certification motion before deadline in scheduling order); *Chrisman v. Countrywide Home Loans, Inc.*, No. 07-cv-333, 2010 WL 1257864, at *2 (E.D. Tenn. Mar. 26, 2010) (granting defendant's motion to strike class allegations where plaintiffs failed to comply with deadline to file motion to certify class). In this case, Plaintiffs were required to file a motion for class certification by April 15, 2021. They failed to do so. They also did not seek an extension from the Court or explain why class certification should be saved for a later time. Because Plaintiffs have not offered any reason for their failure to comply with the Court's order, the Court will grant the City's motion and strike the class allegations from the Complaint.

IT IS THEREFORE ORDERED that the City's motion to strike Plaintiffs' class allegations is **GRANTED**. The class allegations in Plaintiffs' complaint are **STRICKEN**. The City's motion to deny class certification is **DENIED as moot**.

Dated at Green Bay, Wisconsin this 12th day of May, 2021.

s/ William C. Griesbach
William C. Griesbach
United States District Judge